

2005-07308

NO. _____

STATE OF TEXAS,
Plaintiff

v.

ELVIA DIAZ, a/k/a ELVIA MARTINEZ¹
d/b/a DIAZ INCOME TAX and CENTRO
DOCUMENTAL,
Defendant

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

113 JUDICIAL DISTRICT

EX PARTE TEMPORARY RESTRAINING ORDER

Plaintiff, State of Texas, has filed its Original Petition in this cause seeking a Temporary and Pennanent Injunction against Defendant Elvia Diaz, a/k/a Elvia Martinez, and in the same petition has presented its request for an Ex Parte Temporary Restraining Order. The Court FINDS that Defendant may be violating §§17.46(a) and (b) of the Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN §17.41 *et. seq.* and TEX. GOVT. CODE ANN. § 406.017 (Notary Statute). It appears from facts set forth in the Plaintiff's Original Petition and the exhibits and sworn affidavits attached thereto, that unless Defendant is immediately restrained from the acts prohibited below, Defendant will commit such acts before notice can be given and a hearing can be held on the State of Texas' request for a Temporary Injunction. Furthermore, Defendant will continue to use deception in obtaining money from consumers which she is not qualified or authorized to provide, and may well dissipate and secrete their assets before a judgment for restitution can be rendered. Such injury would be irreparable because continued violations of the DTPA may well cause many more consumers to lose their money by deception. Given the likelihood of dissipation of Defendant's assets prior to rendition of a final judgment, the possibility of

¹ Defendant has also been known as Elvia Ibarra.

restitution for consumers will be remote unless an order freezing assets is granted.

1. **IT IS THEREFORE ORDERED** that Defendant, Elvia Diaz, her officers, agents, servants, employees, attorneys and any other persons in active concert or participation with her, including but not limited to, all financial institutions holding money in the name and/or for the benefit of the above named Defendant, who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices:

A. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing or allowing the transfer, removal, or withdrawal from any financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendants without further order of this court;

B. Opening or causing to be opened any safe deposit boxes or storage facilities titled in the name of Defendant or any of Defendant's assumed names, or subject to access or control by Defendant, without providing Plaintiff and the Court prior notice by motion seeking such access;

2. **IT IS FURTHER ORDERED** that Defendant Elvia Diaz, her officers, agents, servants, employees, attorneys and any other persons in active concert or participation with her, who receives actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices:

A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court

any books, records, documents, invoices or other written materials relating to the business of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;

B. Soliciting or accepting compensation to prepare documents for another person in any proceeding (administrative or otherwise) relating to immigration to the United States;

C. Soliciting or accepting compensation to prepare documents for another person in any type of proceeding relating to work visas or permits, residency status, Immigration or U.S. Citizenship in any court, tribunal, or agency of the United States;

D. Advising any person as to any issue relating to immigration, residency status, work visas/permits or U.S. Citizenship;

E. Soliciting or accepting any type of fee for purporting to advise or assist someone in filling out paperwork for any issue relating to immigration, residency status, work visas/permits or U.S. Citizenship;

F. Advertising in any type of medium that Defendant is able to assist or advise someone in any capacity relating to immigration, work visas or permits, residency status, or U.S. Citizenship;

G. From acting in the capacity of a notary public;

H. From advertising Defendant's services as a notary public, notario publico, or notaria publica .

I. Telling consumers that Defendant can assist them in any way for Immigration related services or needs if they pay Defendant a fee;

J. Telling consumers that they can obtain residency status through relatives;

K. Telling consumers that they are eligible for residency permits or can obtain citizenship

status;

L. Soliciting or accepting compensation to obtain relief on behalf of another from an officer, agency, or employee of the United States;

M. Using the phrase "notario" or "notario publico" to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television;

3. **IT IS FURTHER ORDERED** that the Defendant advise any financial or brokerage institution, escrow agent, title company, storage facility, commodity trading company, business entity or person maintaining or having custody or control of any account or other asset of Defendant Elvia Diaz, to, within five (5) business days of the date of service of this Order, provide to counsel for the Plaintiff and the defendant/account holder a statement or letter setting forth:

A. The identification of each account or asset titled in the name, individually or jointly, of Defendant, or held on behalf of, or for the benefit of, Defendant;

B. The balance of each such account, or a description and estimated value of such assets, as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other assets was remitted; and

C. The identification of any safe deposit box or storage facility that is either titled in the name individually or jointly, of Defendant, or is otherwise subject to access or control by Defendant;

4. **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that, as used in this Judgment, the following terms are defined as follows:

A. "Consumer" means an individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services;

B. "Defendant" means Elvia Diaz, a/k/a Elvia Martinez, d/b/a Diaz Income Tax and Centro Documental, their successors, assigns, officers, agents, subcontractors, servants, present and former employees, corporations and any other persons in active concert or participation with them;

C. "Services" means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods;

D. "Person" means an individual, partnership, corporation, association, or other group, however organized;

5. **IT IS FURTHER ORDERED** that Plaintiff ^{& Defendant} shall be granted leave to take telephonic, video, written, and other depositions prior to any scheduled temporary injunction hearing upon reasonable shortened notice to ^{the other side} ~~Defendant~~;

6. **IT IS FURTHER ORDERED** that Defendant in this cause be and hereby are commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14) day after entry or until further order of this Court, whichever is less.

7. The Clerk of the above-entitled Court shall forthwith issue an ex parte temporary restraining order in conformity with the law and the terms of this Order. This Order shall be effective without the execution and filing of a bond as Plaintiff, State of Texas is exempt from such bond under TEX. BUS. & COM. CODE ANN. §17.47(b).

Hearing on Plaintiff, State of Texas' Application for an Temporary Injunction is hereby set for
the 14th day of Feb 2005 at 9:00 o'clock, A m.

SIGNED this 3rd day of Feb 2005 at 10:00 o'clock, A m.



JUDGE PRESIDING